



**OFFICE OF THE COUNTY PROSECUTOR
JENNIFER WEBB-MCRAE
CUMBERLAND COUNTY PROSECUTOR**

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May 13, 2024

Via email to: opra+request-61374-51xxxxxx@xxxxxxxx.xxramachine.com

Re: Records request

Dear Ms. Erin:

This Office is in receipt of your OPRA request dated May 2, 2024, for the following records: "(1) October 1, 2023 to May 1, 2024 Email log of Mary Reeder including the TIME, DATE, SUBJECT, TO and FROM in PDF format; (2) October 1, 2023 to May 1, 2024 Email log of Holly Moore including the TIME, DATE, SUBJECT, TO and FROM in PDF format; (3) October 1, 2023 to May 1, 2024 Email log of Harold Shapiro including the TIME, DATE, SUBJECT, TO and FROM in PDF format; (4) October 1, 2023 to May 1, 2024 Email log of Lesley Snock including the TIME, DATE, SUBJECT, TO and FROM in PDF format; (5) October 1, 2023 to May 1, 2024 Email log of Pearl Downing including the TIME, DATE, SUBJECT, TO and FROM in PDF format; (6) October 1, 2023 to May 1, 2024 Email log of Andre Araujo including the TIME, DATE, SUBJECT, TO and FROM in PDF format; (8) October 1, 2023 to May 1, 2024 Email log of Lourdes Clouser including the TIME, DATE, SUBJECT, TO and FROM in PDF format; (9) October 1, 2023 to May 1, 2024 Email log of Monica Martucci including the TIME, DATE, SUBJECT, TO and FROM in PDF format; (10) October 1, 2023 to May 1, 2024 Email log of Monica Mosley including the TIME, DATE, SUBJECT, TO and FROM in PDF format; (11) October 1, 2023 to May 1, 2024 Email log of Stephen Sayer including the TIME, DATE, SUBJECT, TO and FROM in PDF format; (12) October 1, 2023 to May 1, 2024 Email log of Ronald Tobolski including the TIME, DATE, SUBJECT, TO and FROM in PDF format; (13) MAY 1, 2023 to May 1, 2024 Email log of Charles Wettstein including the TIME, DATE, SUBJECT, TO and FROM in PDF format; (14) December 2, 2022 to May 1, 2023 Email log of David Weber including the TIME, DATE, SUBJECT, TO and FROM in PDF format; (15) May 1, 2023 to May 1, 2024 Email log of Jennifer Webb-McRae including the TIME, DATE, SUBJECT, TO and FROM in PDF format; (16) December 2, 2022 to May 1, 2024 Email log of Lorena Diaz including the TIME, DATE, SUBJECT, TO and FROM in PDF format."

Please be advised that this request requires this Office to review a substantial amount of email logs covering an accumulative date range of 143 months, or 11.9 years, consisting of 187,266

total data entries. The process of reviewing these entries to determine what items are subject to disclosure versus those to be redacted will require time consuming review and legal analysis. This process is sufficiently extraordinary to warrant imposition of a special service charge pursuant to N.J.S.A. 47:1A5(c). Before undertaking to provide you with the email logs to which you are entitled, we need clarification from you as to whether you are willing to pay the associated service charge.

As you are likely aware, the authority to request email logs comes from Paff v. Galloway Twp., 229 N.J. 340 (2017), wherein the requestor in that matter requested email-related "fields of information" that included "sender", "recipient", "date" and "subject". Id. at 343, 344. The Court referred to this request as for "email logs" as opposed to email content. Id. at 343.

Your present request is significantly different than the request in Paff. In that case, the requestor's request was for two email accounts (the municipal clerk and chief of police), for dates covering a two-week period. 229 N.J. at 343. The township's IT specialist advised that generating the requested record would take two to three minutes. Id. at 354. In contrast, you are requesting data from 15 accounts over various lengths of time spanning from eight months each to seventeen months each, accumulatively amounting to a period of over 143 months, or total 11.9 years' worth of emails to be included, reviewed and redacted as necessary in response to your request.

On this subject, the court in Paff recognized: "The Township [has] raised legitimate concerns whether the emails are subject to OPRA exceptions, exemptions, or redactions - issues not fully explored or discussed before the trial court. The Township fears that wholesale disclosure of the requested fields of information from the emails may compromise investigations or investigatory techniques, thwart the internal exchange of confidential information, or lead to the release of citizens' email addresses causing an unwarranted invasion of their privacy... it may take only two or three minutes for an IT Specialist to make accessible fields of information from two weeks of emails; it will take considerably longer for the Township Clerk and Chief of Police to determine whether the requested information in each email may intrude on privacy rights or raise public-safety concerns. The potential issues by the Township must be addressed". Id. at 357.

As previously stated, the information you are requesting would include the review of 187,266 total lines of data. As contemplated by Paff, each individual, including various attorneys and officers including the Cumberland County Prosecutor, First Assistant Prosecutor, Trial Chief, Sergeant of the Professional Standards Unit of the Cumberland County Prosecutor's Office and various other members of this office would have to review his or her own email data for exemptions and redactions. Similar to the police chief in Paff but arguably more so where an assistant prosecutor is concerned, email-related information can raise confidentiality issues that include but are not limited to criminal investigations, uncharged criminal cases, privilege, interagency deliberation, work product, and privacy of victims as well as third parties.

Paff specifically recognized that a service-fee may be charged when satisfying a request requires a substantial amount of manipulation or programming of information technology, and that such provision may be implicated where the request is for computer-generated email data information. Paff, 229 N.J. at 354. Once more, N.J.S.A. 47:1A5(c) authorizes a "public agency to impose a 'special service charge' if a response to a request for production of government records

will involve an ‘extraordinary expenditure of time and effort,’” so long as the charge is “reasonable” and based on the “actual direct cost” of accommodating the request. Fisher v. Division of Law, 400 N.J. Super. 61, 65, 69 (App. Div. 2008) (quoting N.J.S.A. 47:1A-5c).

It is conservatively estimated that satisfaction of your public records request will take approximately two hundred and sixty hours. This far exceeds the amount of time required to respond to a typical OPRA request. Based upon the fact that the email logs in question together consist of 187,266 responsive entries, we maintain that the effort necessary to accommodate your OPRA request is “substantial,” “extensive” and “extraordinary” enough to justify the charging of a service fee.

A special service charge must be “reasonable” and “based upon the actual direct cost of providing” the record. N.J.S.A. 47:1A-5c & d. However, accommodating this request would involve an extraordinary expenditure of time and effort, justifying imposition of a special service charge. N.J.S.A. 47:1A-5(c). The special service charge has been assessed at \$12,406.37.

Additionally, the records that you have requested do not presently exist; they would have to be generated and then reviewed for redaction to accomplish a releasable product. N.J.S.A. 47:1A-5(i). Satisfying this request would entail a multi-step process that would require collaboration of 15 of our staff members reviewing an accumulative 187,266 responsive lines of data individually for their potential impact on ongoing investigations, civilian privacy concerns, and various other applicable exemptions to the Open Public Records Act. Accordingly, a minimum of one month would be needed to produce the records.

Pursuant to N.J.S.A. 47:1A-5(c), you "shall have the opportunity to review and object to the charge prior to it being incurred". Below, I provide an explanation of how we arrived at the special service charge. Review at your leisure. I will await a response from you before undertaking the process of satisfying the request.

The program that our office uses to generate the "email logs" unavoidably produces reports that contain information that is extraneous and / or unresponsive to the data that you requested. Consequently, after each report is run, the IT administrator must manually edit the result to excise unresponsive rows and columns of data. Producing each of the report logs in responsive form would take our IT technician a minimum of 10 minutes, as estimated based on your request (1), which is one of fifteen separate requests and encompasses a length of time (eight months) that is not even half as long as your largest request, request (16), which encompasses a period of time spanning 17 months on its own. Accordingly, estimating as conservatively as possible the time it would take to generate each of your requested records at ten minutes each, calculated at the hourly rate of this office's IT technician, this amount would ordinarily be added to an ultimate service charge. However, in the interest of keeping your ultimate service charge as low as possible and in the interest of transparency, the State will not include this portion of the assessment in the total service fee charge for the purposes of this request.

After the reports are generated, they would be distributed to each assistant prosecutor and named individual to review for redaction. See Paff v. Galloway Twp, 229 N.J. 340, 357-58 (2017). The Supreme Court has recognized that "requestors may be assessed costs for preparation work

involved in responding to a request," including the cost of redaction where same would involve an extraordinary amount of time or effort. Burnett v. County of Bergen, 198 N.J. 408, 438 (2009).

Not all assistant prosecutors receive the same volume of email; therefore, not every attorney's report and redaction task would be equal. Our executive-level prosecutors receive more email than line-assistant prosecutors. To fairly estimate the volume of data in order to reasonably assess "actual cost" (N.J.S.A. 47:1A-5(c)), the lines of data responsive to your requests have been determined. A line of data consists of sender, recipient, subject, and date. That approximate amount of lines of data in this matter is 187,266 entries.

We conservatively estimate that it would take an individual 30 minutes to review 360 lines of data, optimistically estimating only five seconds per line of data. This generalized five seconds includes not only the careful read-through of each entry for clearly excisable matters, but also follow-up questions to the OPRA custodian (myself) about data that is ambiguous or questionable in terms of redaction and individual review by this Records Custodian of the data for applicable exemptions to the Open Public Records Act as well as the performing of all necessary redactions as needed. Accordingly, where your requested records constitute 187,266 entries of data, and the hourly salary of just this records custodian is \$47.70, a review of the total responsive records in this matter would take two hundred and sixty hours, which leads to the most conservative estimated total sum for review for redaction in this matter as \$12,406.37.

Of note, this does not factor in the average salary rate of the three executive level prosecutors that are also included in your request. In the interest of providing the lowest possible estimate in this matter, I have excluded these higher salaries from this calculation because while they would be required to review all responsive records relating to their email logs per the court's directive in Paff, I would anticipate that I could keep this cost as low as possible by reviewing these records myself in their stead, and simply provide them the records following my review for approval to release, thus minimizing the amount of time required for review by these individuals with a higher average salary than myself and functionally eliminating the need to include their salary in the calculus of the total service fee.

Of additional note, I have also not included in this calculus the additional time that it would take for clerical staff to actually perform the necessary redactions on your requested records once identified by the individual reviewing the logs, once again in the interest of keeping this estimated cost as low as possible. I have instead included the estimated time for redaction in the five seconds allotted for review of each entry in this matter, despite the fact that making such redactions would in all likelihood require in the extensive assistance of clerical staff whose time is also not being added to the calculus of the total service fee, in the interest of keeping this estimated service fee as low as conceivably possible.

Accordingly, the total conservative estimated service cost in this matter, without including the reasonable cost associated with the IT technician to generate your request reports which do not presently exist, and without including the cost of the average salary of the executive level prosecutors associated with your request, and without including the cost of clerical staff hours required to perform the required redactions in this matter, as authorized pursuant to N.J.S.A. 47:1a-5(c) is \$12,406.37.

We would like to make the position of this Office clear. Our position is not that every time there is a public record request for email logs there will be a special service charge assessed. We also are not imposing a special service charge because overtime would be required to meet the 7-day OPRA deadline in this case. The service charge would be imposed here in light of the fact that it involves a request for a voluminous amount of records that require multiple redactions; therefore, the time to review and redact these records is obvious and very reasonably anticipated.

Please advise the undersigned as to whether you would like us to move forward with the redaction process, or whether you would like to withdraw your public record request for the email logs. We also remain receptive to reaching a reasonable solution with you regarding these records that accommodates both of our interests. N.J.S.A. 47:1A-5g. Should you disagree with our decision, please contact us in writing with your concerns so that we may consider them. If I can be of further assistance, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Stephen C. Sayer", written over a horizontal line.

Stephen C. Sayer [114352015]
Assistant Prosecutor
Alternate Records Custodian